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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/024,496

**Applicant(s)**

RUBINSTENN ET AL.

**Examiner**

Igor N. Borissov

**Art Unit**

3628

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12/30/2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-50 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-50 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-11, 13-16, 18-25, 32-39, 41, 43, 44, 46-50 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 1-11, 13-16, 18-25, 32-39, 41, 43, 44, 46-50 are directed to a series of steps. In order for a series of steps to be considered a proper process under § 101, a claimed process should either: (1) be tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials). *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972). Thus, to qualify as patent eligible, these processes should positively recite the other statutory class to which it is tied (e.g., by identifying the apparatus which accomplishes the method steps), or positively recite the subject matter that is being transformed (e.g., by identifying the product or material that is changed to a different state). Claims 1-11, 13-16, 18-25, 32-39, 41, 43, 44, 46-50 identify neither the apparatus performing the recited steps nor any transformation of underlying materials. The method steps of: "obtaining personal information about a subject via a computer system," and "generating at least one recommendation via the computer system ", as recited in independent claims, could be understood as merely using the computer as a display, of means for communicating information without using the computer for actual manipulation of data. Such use of the computer would constitute trivial use of technology. There is not indication in the claims that said recommendations are generated by the computer. Accordingly, Claims 1-11, 13-16, 18-25, 32-39, 41, 43, 44, 46-50 identify neither the apparatus performing the recited steps nor any transformation of underlying materials, and, therefore, are directed to non-statutory subject matter.

***Claim Rejections - 35 USC § 102***

The following is a quotation of 35 U.S.C. 102(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

**Claims 25 and 26 are rejected under 35 U.S.C. 102(a) as being anticipated by Maloney et al. (WO 01/18674).**

Maloney et al. (Maloney) teaches a method for providing a customized product combination to a consumer, comprising:

**Claim 25.** Obtaining personal information about a consumer, the personal information including at least demographic information about the consumer, the demographic information reflecting a geographic area location of the subject (delivering a product to the customer indicates obtaining a geographical location of the consumer) (P. 6, L. 30 – P. 7, L. 3; P. 11, L. 18); generating a list of a plurality of cosmetic products for the consumer (P. 7, L. 13-16); receiving from the subject a request for cosmetic advice (P. 2, L. 7-8); accessing local information (water hardness, pH level) for the geographic area (P. 10, L. 7-8; P. 11, L. 11-12); and generating at least one recommendation for use of at least one cosmetic product on the list, the at least one recommendation being a function of the personal information and the local information (P. 7, L. 15-16).

**Claim 26.** Said method, wherein receiving the request occurs via a network and in at least one location remote from a location of the consumer (P. 4, L. 7-10).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1-9, 11-13, 17, 18, 20-24, 27, 30-32 and 34-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maloney in view of Fox et al. (US 5,796,932).**

Maloney teaches a computer-implemented method and system for providing a customized product combination to a consumer, said system comprising a processor and a memory for storing personal information about a customer and an executable code for conducting said method (P. 18, L. 1-34), said method comprising:

**Claims 1 and 27.** Obtaining personal information about a consumer, the personal information including at least demographic information about the consumer, the demographic information reflecting a geographic area location of the subject (delivering a product to the customer indicates obtaining a geographical location of the consumer) (P. 6, L. 30 – P. 7, L. 3; P. 11, L. 18); determining local information

(environmental data) corresponding to the demographic information (P. 10, L. 7-8; P. 11, L. 11-12); generating and presenting at least one recommendation for use of at least one cosmetic product based on at least the personal information and the local information (P. 7, L. 14-15; P. 7, L. 11-13).

Maloney does not specifically teach that said determined local information, which corresponds to the demographic information, is determined based on said demographic information.

Fox et al. (Fox) teaches a computer-implemented method and system for analysis of weather impact on a retail, personal care industry (C. 7, L. 65 - C. 8, L. 1), including collecting demographic (location) information about consumers (C. 9, L. 1-2, 19-22), and determining local weather information based on said demographic (location) information (C. 13, L. 3-8). Furthermore, Fox teaches that so as weather is a local phenomenon, determining and predicting local weather conditions based on determined location information can predict the impact of weather on sales of goods in said determined location (C. 4, L. 10-11, 58-61).

Therefore, it would have been obvious to one having ordinary skill in art the time the invention was made to modify Maloney to include determining and predicting local weather conditions based on local information, as disclosed in Fox, because it would advantageously allow to utilize local actual and forecasted weather information (e.g., temperature and humidity) in planning of sales and advertising of personal care products, thereby maximize profits.

**Claim 2.** Fox teaches said method and system, wherein said local information includes weather forecast (C. 13, L. 3-8).

**Claim 3.** Obtaining information about recent purchases of cosmetic products from each consumer, and having address information of said each consumer indicates obtaining data on cosmetic usage of others located in the geographic area of the subject (Maloney; P. 12, L. 17-18).

**Claim 4.** Fox teaches said method and system, wherein said local information includes weather forecast including temperature, precipitation and snowfall (C. 6, L. 13-14), thereby indicating *air quality data*.

**Claims 5 and 11.** Fox teaches said method and system, wherein said local information includes historical and actual weather conditions and predicted weather forecast including temperature, precipitation and snowfall (C. 6, L. 13-14), thereby indicating *climate data for the geographic area*.

**Claims 6.** Obtaining local water hardness and pH level information indicates obtaining ecological data for the geographic area of the subject (Maloney; P. 10, L. 7-8; P. 11, L. 11-12).

**Claim 7.** Said method, wherein the personal information further includes lifestyle (Maloney; P. 7, L. 2).

**Claim 8.** Said method, wherein the lifestyle information includes at least one of fashion preferences, clothing color preferences, and cosmetic preferences (Maloney; P. 11, L. 27-30).

**Claim 9.** Said method, wherein the physical characteristics information includes at least one of age, a skin condition, skin tone, a propensity to tan, hair color, and facial feature characteristics (Maloney; P. 7, L. 1-3).

**Claim 12.** Receiving over a network, at a site remote from the subject, the personal information about the subject, and transmitting the recommendation to the consumer over the network (Maloney; P. 4, L. 7-10).

**Claim 13.** Generating recommendation based on physical characteristics information, the local information, and the variable preference information (Maloney; P. 4, L. 18-23).

**Claims 17-18.** Accessing the node *prior to* the time of intended cosmetic application (See claim 1). Information as to *immediately prior, or in an evening before, or in a day of intended cosmetic application* is non-functional language and given no patentable weight. Non-functional descriptive material cannot render non-obvious an invention that would otherwise have been obvious. See: *In re Gulack* 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983) *In re Dembiczak* 175 F.3d 994, 1000, 50 USPQ2d 1614, 1618 (Fed. Cir. 1999). The step of "accessing the node prior to the time of intended cosmetic application" would be performed regardless the actual time of intended cosmetic application. Furthermore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Maloney in view of Fox to include that said "accessing the node *prior to* the time of intended cosmetic application" includes *immediately prior, or in an evening before, or in a day of intended*



*cosmetic application*, or in any other day prior to the intended cosmetic application because it would advantageously allow the subject to do it based on her/his schedule and convenience.

**Claim 20.** Obtaining information about recent purchases of cosmetic products from a consumer indicates receiving an identification of products at the subject's disposal (P. 12, L. 17-18).

**Claim 21.** Said method, wherein the physical characteristics information includes at least one of color, tone, texture, elasticity, oiliness, and pH of at least one of the subject's hair and skin (Maloney; P. 11, L. 9-10).

**Claims 22-24.** Same reasoning as applied to claim 1.

**Claim 30.** Maloney teaches said system for providing beauty advice, the system comprising: a memory including a program that obtains personal information about a customer, the personal information including at least demographic information about the customer, the demographic information reflecting a geographic area location of the subject and geographic area location information of the consumer (P. 6, L. 30 – P. 7, L. 3; P. 11, L. 18); determines local information corresponding to the demographic information (P. 10, L. 7-8; P. 11, L. 11-12); generates and presents at least one recommendation for use of at least one cosmetic product based on at least one of the personal information and the local information (P. 7, L. 14-15); and a processor that runs the program (P. 14, L. 3-12).

Maloney does not specifically teach that said determined local information, which corresponds to the demographic information, is determined based on said demographic information.

Fox teaches a computer-implemented method and an interface for analysis of weather impact on a retail, personal care industry (C. 7, L. 65 - C. 8, L. 1), including collecting demographic (location) information about consumers (C. 9, L. 1-2, 19-22), and determining local weather information based on said demographic (location) information (C. 13, L. 3-8). Furthermore, Fox teaches that weather is a local phenomenon rather than a national phenomenon, and providing interface which determines and predicts local weather conditions based on determined location information can predict the impact of weather on sales of goods in said location (C. 4, L. 10-11, 58-61).

Therefore, it would have been obvious to one having ordinary skill in art the time the invention was made to modify Maloney to include predicting local weather conditions based on local information functionality, as disclosed in Fox, because it would advantageously allow to utilize local actual and forecasted weather conditions (e.g., temperature and humidity) in planning of sales and advertising of personal care products, thereby maximize profits.

**Claim 31.** Maloney teaches a computer-readable medium containing instructions for causing a computer to perform said computer-implemented method for providing

beauty advice, the method comprising: obtaining personal information about a customer, the personal information including at least demographic information about the customer, the demographic information reflecting a geographic area location of the subject and geographic area location information of the consumer (P. 6, L. 30 – P. 7, L. 3; P. 11, L. 18); determining local information corresponding to said local information (P. 10, L. 7-8; P. 11, L. 11-12); generating and presenting at least one recommendation for use of at least one cosmetic product based on at least one of the personal information and the local information (P. 7, L. 14, L. 3-15).

Maloney does not specifically teach that said determined local information, which corresponds to the demographic information, is determined based on said demographic information.

Fox teaches a computer-implemented method and an interface for analysis of weather impact on a retail, personal care industry (C. 7, L. 65 - C. 8, L. 1), including collecting demographic (location) information about consumers (C. 9, L. 1-2, 19-22), and determining local weather information based on said demographic (location) information (C. 13, L. 3-8). Furthermore, Fox teaches that weather is a local phenomenon rather than a national phenomenon, and providing interface which determines and predicts local weather conditions based on determined location information can predict the impact of weather on sales of goods in said location (C. 4, L. 10-11, 58-61).

Therefore, it would have been obvious to one having ordinary skill in art the time the invention was made to modify Maloney to include determining and predicting local

weather conditions based on local information, as disclosed in Fox, because it would advantageously allow to utilize local actual and forecasted weather conditions (e.g., temperature and humidity) in planning of sales and advertising of personal care products, thereby maximize profits.

**Claim 32.** Maloney teaches said method for providing a customized product combination to a consumer, comprising:

maintaining a plurality of consumer categories (P. 6, L. 32 – P. 7, L. 11; P. 9, L. 33-35); obtaining information identifying a geographic area where beauty advice is to be dispensed (delivering a product to the customer indicates obtaining a geographical location of the consumer) (P. 6, L. 30 – P. 7, L. 3; P. 11, L. 18); obtaining local information corresponding to the geographic area (P. 10, L. 7-8; P. 11, L. 11-12); generating and presenting a plurality of differing cosmetic product usage recommendation, each recommendation being a function of the local information and at least one of the plurality of categories (P. 7, L. 14-15; P. 7, L. 11-13).

Maloney does not specifically teach that said local information includes weather forecast for the geographic area.

Fox teaches a computer-implemented method and an interface for analysis of weather impact on a retail, personal care industry (C. 7, L. 65 - C. 8, L. 1), including collecting location information about consumers (C. 9, L. 1-2, 19-22), and determining local weather information based on said location information (C. 13, L. 3-8).

Furthermore, Fox teaches that weather is a local phenomenon rather than a national phenomenon, and providing interface which determines and predicts local weather conditions based on determined location information can predict the impact of weather on sales of goods in said local area (C. 4, L. 10-11, 58-61).

Therefore, it would have been obvious to one having ordinary skill in art the time the invention was made to modify Maloney to include that said local information includes weather forecast for the geographic area, as disclosed in Fox, because it would advantageously allow to utilize forecasted weather conditions (e.g., temperature and humidity) in planning of sales and advertising of personal care products, thereby maximize profits.

Furthermore, Maloney teaches:

**Claim 34.** Presenting includes organizing recommendations by category (P. 7, L. 5-13).

**Claim 35.** Obtaining information about recent purchases of cosmetic products from each consumer, and having address information of said each consumer indicates obtaining data on cosmetic usage of others located in the geographic area of the subject (P. 12, L. 17-18).

**Claim 36.** Said method, wherein the personal information further includes lifestyle (P. 7, L. 2).

**Claim 37.** Said method, wherein the physical characteristics information includes at least one of age, a skin condition, skin tone, a propensity to tan, hair color, and facial feature characteristics (P. 7, L. 1-3).

**Claim 38.** See reasoning applied to claim 32.

**Claim 39.** Generating recommendation based on physical characteristics information, the local information, and the variable preference information (P. 4, L. 18-23).

**Claim 40.** Said method conducted in a network environment (P. 16, L. 20-34).

**Claim 41.** Maloney teaches said method for providing a customized product combination to a consumer, comprising:

obtaining demographic information about the consumer (delivering a product to the customer indicates obtaining a geographical location of the consumer) (P. 6, L. 30 – P. 7, L. 3; P. 11, L. 18); determining local information corresponding to said obtained demographic information (P. 10, L. 7-8; P. 11, L. 11-12); generating and presenting at least one recommendation for use of at least one cosmetic product in the geographic area based on the information (P. 7, L. 14, L. 3-15).

Maloney does not specifically teach that said local information is determined by manipulating said received demographic information.

Fox teaches a computer-implemented method and an interface for analysis of weather impact on a retail, personal care industry (C. 7, L. 65 - C. 8, L. 1), including

collecting demographic (location) information about consumers (C. 9, L. 1-2, 19-22), and determining local weather information by manipulating said demographic (location) information (C. 13, L. 3-8; C. 18, L. 56 – C. 19, L. 5). Furthermore, Fox teaches that weather is a local phenomenon rather than a national phenomenon, and providing interface which determines and predicts local weather conditions based on determined location information can predict the impact of weather on sales of goods in said local area (C. 4, L. 10-11, 58-61).

Therefore, it would have been obvious to one having ordinary skill in the art the time the invention was made to modify Maloney to include said determining local weather conditions by manipulating said local information, as disclosed in Fox, because it would advantageously allow to utilize local actual and forecasted weather conditions (e.g., temperature and humidity) in planning of sales and advertising of personal care products, thereby maximize profits.

**Claim 42.** Said method conducted in a network environment (Maloney; P. 16, L. 20-34).

**Claim 43.** Maloney teaches said method for providing a customized product combination to a consumer, comprising:

obtaining personal information about a consumer, the personal information including at least demographic information about the consumer, the demographic information reflecting a geographic area location of the consumer (delivering a product

to the customer indicates obtaining a geographical location of the consumer) (P. 6, L. 30 – P. 7, L. 3; P. 11, L. 18); determining local information corresponding to the demographic information (P. 10, L. 7-8; P. 11, L. 11-12); generating at least one cosmetic analysis based on at least one of the personal information and the local information and presenting the at least one cosmetic analysis (P. 7, L. 14-15).

Maloney does not specifically teach that said determined local information is determined based on said demographic information.

Fox teaches a computer-implemented method and an interface for analysis of weather impact on a retail, personal care industry (C. 7, L. 65 - C. 8, L. 1), including collecting demographic (location) information about consumers (C. 9, L. 1-2, 19-22), and determining local weather information based on said demographic (location) information (C. 13, L. 3-8). Furthermore, Fox teaches that weather is a local phenomenon rather than a national phenomenon, and providing interface which determines and predicts local weather conditions based on determined location information can predict the impact of weather on sales of goods in said local area (C. 4, L. 10-11, 58-61).

Therefore, it would have been obvious to one having ordinary skill in art the time the invention was made to modify Maloney to include determining and predicting local weather conditions based on local information, as disclosed in Fox, because it would advantageously allow to utilize local actual and forecasted weather conditions (e.g., temperature and humidity) in planning of sales and advertising of personal care products, thereby maximize profits.



**Claims 44, 46 and 47.** Same reasoning as applied to claim 43.

**Claim 45.** Conducting said method in a network environment (Maloney; P. 16, L. 20-34).

**Claim 48.** Fox teaches determining local information by manipulating the demographic information (C. 13, L. 3-8; C. 18, L. 56 – C. 19, L. 5).

**Claim 49.** Maloney teaches said method for providing a customized product combination to a consumer, comprising:

obtaining personal information about a consumer, the personal information including at least demographic information about the consumer, the demographic information reflecting a geographic area location of the consumer (delivering a product to the customer indicates obtaining a geographical location of the consumer) (P. 6, L. 30 – P. 7, L. 3; P. 11, L. 18); determining local information corresponding to the demographic information (P. 10, L. 7-8; P. 11, L. 11-12); generating and presenting at least one recommendation for use of at least one cosmetic product based on at least one of the personal information and the local information (P. 7, L. 14-15; P. 7, L. 11-13).

Maloney does not specifically teach that said determined local information is determined based on said demographic information and historical information associated with said area.

Fox teaches a computer-implemented method and an interface for analysis of weather impact on a retail, personal care industry (C. 7, L. 65 - C. 8, L. 1), including collecting demographic (location) information about consumers (C. 9, L. 1-2, 19-22), providing a historical weather information for various regions; accessing and determining local weather information based on said demographic (location) information and historical weather information for said geographical region (C. 13, L. 3-8).

Furthermore, Fox teaches that weather is a local phenomenon rather than a national phenomenon, and providing interface which determines and predicts local weather conditions based on determined location information can predict the impact of weather on sales of goods in the local area (C. 4, L. 10-11, 58-61).

Therefore, it would have been obvious to one having ordinary skill in art the time the invention was made to modify Maloney to include determining local information based on said demographic information and historical information associated with said area, as disclosed in Fox, because it would advantageously allow to utilize local actual and historical weather conditions (e.g., temperature and humidity) in planning of sales and advertising of personal care products, thereby maximize profits.

**Claim 50.** Fox teaches projecting local (weather) information based on the demographic (geographical) information and the historical (weather) information (C. 6, L. 12).

**Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Maloney et al. in view of Fox et al. and further in view of Anderson (US 2002/0082869).**

**Claim 10.** Maloney in view of Fox teaches all the limitations of claim 10, except that family history information includes historical physical characteristics information about relatives of the consumer.

Anderson teaches a method for providing and updating customized health care over the Internet, wherein personal data of an individual includes age and medical history of the individual's relatives [0016].

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Maloney in view of Fox to include that said family history information includes historical physical characteristics information about relatives of the consumer, as disclosed in Anderson, because it would advantageously allow to determine and exclude certain beauty product ingredients which may cause negative health conditions or even diseases to which the consumer may have a predisposition.

**Claims 14-16, 28, 29 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maloney et al. in view of Fox et al. and further in view of Farchione (US 2002/0059248).**

**Claim 14.** Maloney in view of Fox teaches said method, wherein the variable preference information includes an identification of clothing that the subject intends to wear (Maloney; P. 7, L. 16-19). Maloney and Fox does not specifically teach that said recommendation contains a suggestion to use at least one product complementary to the identified clothing.

Fachione teaches a method and system for determining proper color for makeup and clothing, including suggesting to use at least one cosmetic product complementary to the desired fashion outlook [0023]; [0010].

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Maloney in view of Fox to include suggesting to use at least one cosmetic product complementary to the desired fashion outlook, as disclosed in Fachione, because it would advantageously allow to provide customers with a product most suitable for customer's physical characteristics, as specifically taught in Fachione [0005].

**Claim 15.** Said method, wherein the identification of clothing is a color of clothing (Fachione; [0010]). The motivation to combine the references would be providing customers with a product most suitable for customer's physical characteristics.

**Claim 16.** Said method, wherein the product is a cosmetic product for adding color to a face of the subject (Fachione; [0003]). The motivation to combine the references would be providing customers with a product most suitable for customer's physical characteristics.

**Claim 28.** Fachione teaches generating a suggestion for clothing based on the obtained information [0027]. The motivation to combine the references would be providing customers with a product most suitable for customer's physical characteristics.

**Claim 29.** Fachione teaches that said cosmetic product is chosen from makeup and hair product [0019]. The motivation to combine the references would be providing customers with a product most suitable for customer's physical characteristics.

**Claim 33.** Fachione teaches presenting the recommendations to a beauty consultant [0003]. The motivation to combine the references would be presenting most suitable cosmetic products for those customers who prefer to interact with a beauty consultant.

**Claim 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maloney et al. in view of Fox et al. and further in view of Official Notice.**

**Claim 19.** Maloney in view of Fox teaches all the limitations of claim 19, except *suggesting* that the consumer maintain a stock of the plurality of cosmetic products.

Official notice is taken that it is well known that a plurality of consumers have a habit to use cosmetic product every day (See, for example, Ogilvie et al.: Why Women Wear Lipstick: Preliminary Findings; page 4, 5<sup>th</sup> paragraph).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Maloney in view of Fox to include suggesting

that the consumer maintain a stock of the plurality of cosmetic products, because it would advantageously allow the consumer never run out of cosmetic products especially when the consumer needs them the most.

### ***Response to Arguments***

In Applicant Arguments/Remarks Made in an Amendment of 12/30/2008 Applicants traverse the rejections under 35 U.S.C. §§ 102(a) and 103(a) based on "at least the reasons discussed in Applicants' Appeal Brief filed on February 3, 2006, and Reply Brief filed on June 12, 2006."

In response to this argument the examiner stipulates that Applicants' arguments presented in the Appeal Brief filed on February 3, 2006, and Reply Brief filed on June 12, 2006, are fully addressed in the Examiner's Answer to Appeal Brief of 10/30/2008.

### ***Conclusion***

This is a RCE of applicant's earlier Application No. 10/024,496. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Igor Borissov whose telephone number is 571-272-6801. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John W. Hayes can be reached on 571-272-6708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Igor N. Borissov/  
Primary Examiner, Art Unit 3628  
01/26/2009